Supreme Court, U.S.
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85-1093

IN THE
Supreme Court of the United States
October Term, 1985

Shirley M. Ryniawec,

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

Appellees.

JURISDICTIONAL STATEMENT FOR AN APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

*WILLIAM E. WATSON
MARC B. CHERNENKO

WILLIAM E. WATSON &
ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070

Attorneys for Appellant

**Counsel of Record*

QUESTIONS PRESENTED

I. Does the Soldiers and Sailors Civil Relief Act of 1940 prevent a Court from proceeding to order a non-emergency change of child custody when the custodial parent is in the military service of the United States and appears neither in person nor by counsel during the proceedings in which the change of custody has been granted.

LIST OF PARTIES TO THE PROCEEDING

Shirley M. Ryniawec

The Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County

Connie Jean Ryniawec (Eddy)

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No.

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JURISDICTIONAL STATEMENT FOR AN APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

OPINIONS BELOW

There is an unpublished Order of the Supreme Court of Appeals of West Virginia entered on the 23rd day of September, 1985. Additionally, there is an unpublished Order of the Circuit Court of Brooke County, West Virginia entered on the 12th day of June, 1985.

JURISDICTIONAL STATEMENT

The Supreme Court of Appeals of West Virginia issued an Order denying your Appellant's Motion for a Writ of Prohibition on September 23, 1985, thereby permitting the Circuit Court of Brooke County, West Virginia to effect the change of custody of the infant child in this matter from the custodial parent, Michael Leroy Ryniawec, who is a

member of the United States Army and in the military service of the United States. Jurisdiction is invoked under Title 28 of the United States Code Section 1257(1).

STATUTES INVOLVED

The pertinent provisions of the Soldiers and Sailors Civil Relief Act of 1940 are found in 50 U.S.C.A. App. §501-591 (1981) and are as follows:

§*511 Definitions*

(1) The term "person in the military service", the term "persons in military service", and the term "persons in the military service of the United States", as used in this Act (sections 501 to 591 of this Appendix), shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps. the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act (said sections), shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act (said sections), shall include the time between the following dates: For persons in active service at the date of the approval of this Act (Oct. 17, 1940) it shall begin with the date of approval of this Act (Oct. 17, 1940); for persons entering active service after the date of

this Act (Oct. 17, 1940), with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act (said sections) ceases to be in force.

(3) The term "person", when used in this Act (said sections) with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act (said sections), shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

Oct. 17, 1940, c. 888, § 101, 54 Stat. 1179; Oct. 24, 1972, Pub.L. 92-540, Title V, § 504(1), 86 Stat. 1098.

§521 *Stay of proceedings where military service affects conduct thereof*

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act (sections 501 to 591 of this Appendix), unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

Oct. 17, 1940, c. 888, § 201, 54 Stat. 1181.

STATEMENT OF THE FACTS AND CASE

Michael Leroy Ryniawec and Connie Jean Wagner were married in Brooke County, West Virginia, on December 5, 1980. They were subsequently granted a divorce by the Circuit Court of Brooke County, West Virginia by Order entered July 14, 1983. There was one child born of this marriage, namely, Angelina Marie Ryniawec, four years of age. Your Appellant, Shirley M. Ryniawec, is the mother of Michael Leroy Ryniawec and the paternal grandmother of Angelina Marie Ryniawec.

By Memorandum of Opinion entered on the 29th day of April, 1983, custody of the said infant child was awarded to Michael Leroy Ryniawec.

Some several months after receiving custody, Michael Ryniawec enlisted in the United States Army and was stationed in Darmstadt, West Germany. Angelina Marie Ryniawec remained in Brooke County, West Virginia with her paternal grandmother, the Appellant herein, whom the divorce court had in its April 29, 1983, Memorandum of Opinion, considered the person closest to filling the role of said child's mother.

On November 27, 1984, Connie Jean Ryniawec (Eddy), the Appellee herein, filed with the Circuit Court a Petition seeking modification of the Court's prior Order and custody of Angelina Marie. Despite having alleged in her verified Petition that Michael Leroy Ryniawec was in the United States Army and stationed overseas, she proceeded knowingly in the absence of the said serviceman, to attempt to seek custody. At a hearing conducted before the Circuit Court on December 27, 1984 your Appellant first appeared by counsel to advise the Court that Mrs. Eddy's allegations concerning the enlistment of Michael Ryniawec and his overseas assignment were correct and that the terms of the

Soldiers and Sailors Civil Relief Act of 1940 required that a stay be ordered due to the military absence of the custodial parent.

Thereafter, at a hearing conducted May 23, 1985, the Circuit Court again denied the Appellant's Motion for a stay due to Michael Leroy Ryniawec's military absence and proceeded in its June 12, 1985 Order to direct that custody be transferred from the absent serviceman father to the Appellee, Connie Jean Ryniawec (Eddy).

Your Appellant, having been granted intervenor status, thereafter proceeded to file with the Supreme Court of Appeals of West Virginia a Petition for a Writ of Prohibition based upon the Circuit Court's refusal to stay the child custody proceedings due to the military absence of Michael Leroy Ryniawec and its material adverse affect on his ability to participate in those proceedings and conduct his defense. The central issues presented in the Petition were as follows:

1. Whether the Circuit Court can proceed in child custody matters when the custodial parent is a person in the military service of the United States and appearing neither in person nor by counsel during those proceedings in which a change of child custody was granted.

2. Whether the Circuit Court can transfer custody of an infant child from a custodial parent who is a person in the military service of the United States without first finding that the soldier's absence does not materially affect his ability to conduct a defense or otherwise participate in the proceedings.

Although a Rule to Show Cause was initially issued, the Supreme Court of Appeals of West Virginia denied your Appellant's Motion for Writ of Prohibition, by Order dated September 23, 1985. Thereafter, by Order entered

October 8, 1985, the Supreme Court of Appeals stated the operation of its former Order until January 1, 1986 for the purposes of permitting your Appellant to proceed before this Honorable Court.

ARGUMENT FOR THE ALLOWANCE OF THE APPEAL

The Congress of the United States in 1940 enacted the provisions of the Soldiers and Sailors Civil Relief Act as a means of protecting members of the United States military in order to permit them to devote their entire energy and attention to the needs of our country and to permit a suspension of legal proceedings against them which may arise during the time in which they are so serving. The need for this protection is as evident now as it was more than forty years ago. The Congress realized that an absence from one's home because of military obligations could result in great prejudice to one's rights if legal proceedings were conducted and the serviceman was unable to personally participate. Therefore, the Act permitted that

> "At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as a plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."
> 50 U.S.C.A. App. §521 (1981)

This Honorable Court recognized the great potential for

harm associated with legal proceedings conducted in a serviceman's absence in ***Boone v. Lightner,*** 319 U.S. 561, 87 L. Ed. 1587 (1943). In ***Boone,*** this court stated that

> "The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial." 319 U.S. at 575, 87 L. Ed. at 1596

In the instant case, the Circuit Court of Brooke County, West Virginia refused to comply with the terms of the Act as it gave no consideration to and made no findings as to the effects of Michael Leroy Ryniawec's military absence on his ability to participate and defend the child custody modification petition filed by Appellee Eddy. It is the same absence which this Honorable Court considered as "usually prima facie prejudicial" which the Circuit Court chose to disregard entirely.

In the instant case, the Circuit Court abused its discretion in refusing to consider the prejudicial effects of the military absence on the custodial parent from whom custody was taken. However, the terms of the Act placed upon the Circuit Court the affirmative duty to make a determination as to whether or not the military absence had any adverse effect. This duty on the part of the Circuit Court to protect the serviceman was recognized by the United States Court of Appeals for the District of Columbia as it referenced the stay provisions of the Act and held

> "This language made it the duty of the trial judge

to inquire, and find, whether or not the ability of appellant, in the present case, to conduct his defense, was materially affected by reason of his military service." ***In Re Adoption of a Minor,*** 136 F.2d 790, 792 (D.C. Cir. 1943).

Moreover, facts such as those presented in the instant case are not new to the state courts. In ***Lackey v. Lackey,*** 278 S. E. 2d 811 (Va. 1981), the Virginia court addressed a factual situation much like that presented herein. In ***Lackey,*** the parties were granted a divorce and custody of an infant child was granted to the husband. At the time of his enlisting in the United States Navy, Mr. Lackey transferred both physical possession as well as custody of the infant child to his parents. In order to further memorialize this transfer, it was formally granted by the Court. Approximately one year later, the ex-wife petitioned the Court for custody, seeking a transfer from her former in-laws. Then, despite the fact that custody was vested in his parents, the serviceman sought a stay of the proceedings based upon his inability to attend due to his military commitments onboard ship. The Virginia court determined that a stay was proper as it held

"His inability to be present and to participate in his defense undoubtedly affected his ability to defend Mrs. Lackey's petition for a permanent change in custody." 278 S. E. 2d at 812.

The facts in the instant case are much the same as in ***Lackey,*** as the custodial parent is now abroad serving in the United States Army and your Appellant has physical custody of the infant child. In ***Lackey,*** it was the serviceman who requested and was granted a stay based upon the Soldiers and Sailors Civil Relief Act of 1940, in the instant case it was your Appellant who, for the same reasons as Mr. Lackey, moved for and was denied such relief.

While in ***Lackey,*** the Court concluded the husband's inability to attend prejudiced his rights to participate in the proceedings affecting the custody of his child, in the instant case the Appellee Circuit Court made no determination as to the affects of Michael Leroy Ryniawec's absence and instead chose to abuse its discretion and denied the requested stay.

It must be noted that at no point in the lower proceedings or in the Petition which precipitated them was any contention made that the desired custody transfer was based upon some type of emergency affecting the health and welfare of Angelina Marie Ryniawec. The desired transfer had no such basis and the Circuit Court at one point during the May 23, 1985 hearing commended the Appellant for her willingness to raise the infant child and for her success in doing so. Therefore, it cannot be said that the granting of the custody change was based upon the need to effect some type of emergency protection or relief.

Given that, the lower Court disregarded the provisions of the Soldiers and Sailors Relief Act of 1940 in refusing to stay those child custody proceedings despite the fact that the serviceman from whom custody was taken was unable to attend and despite the fact that the Court chose not to make any determinations as to those patently adverse affects upon Michael Leroy Ryniawec caused by his being in West Germany, serving in the United States Army, your Appellant would assert that the Circuit Court's actions were both in violation of and in disregard of federal law.

CONCLUSION

For these reasons stated hereinabove, and for those reasons which are apparent in the record in these proceedings, your Appellant, Shirley M. Ryniawec, respect-

fully requests this Honorable Court grant an appeal in this matter.

Respectfully submitted,

*WILLIAM E. WATSON
MARC B. CHERNENKO

WILLIAM E. WATSON & ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070
(304) 737-0881

ATTORNEYS FOR APPELLANT

*COUNSEL OF RECORD

APPENDIX

APPENDIX A

STATE OF WEST VIRGINIA

At a Regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23 day of September, 1985, the following order was made and entered, to-wit:

Neely, Justice:

Shirley M. Ryniawec,
Petitioner,
No. 16768
v.
The Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County, West Virginia, and Connie Jean Ryniawec (Eddy), Respondents.

This original proceeding in prohibition is before this Court upon the petition of Shirley M. Ryniawec. The petitioner asserts that the respondent Connie Jean Ryniawec should be prohibited from further proceeding with her petition in the Circuit Court of Brooke County which seeks to modify the circuit court's previous order awarding permanent custody of three-year-old Angelina Marie Ryniawec to Shirley M. Ryniawec's son, Michael Leroy Ryniawec.

After reviewing all matters of record, the briefs and argument of counsel, we hold that the circuit court did not abuse its discretion when it refused to stay the respondent's petition to modify the circuit court's previous order of permanent custody. Even though Michael Leroy Ryniawec is currently a private in the U.S. Army, the Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C.A. App.

§520-523 (1981), does not prohibit the circuit court from proceeding in this case. Rather, it is within the circuit court's discretion to hear the respondent's custody petition.

The petitioner, Shirley M. Ryniawec, is entitled to no relief upon her petition, and it is hereby ADJUDGED, ORDERED AND DECREED that the rule to show cause previously issued by this Court is discharged and the Shirley M. Ryniawec's petition for a writ of prohibition denied.

A True Copy

Attest:

Clerk Supreme Court of Appeals

APPENDIX B

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 8th day of October, 1985, the following order was made and entered, to-wit:

Shirley M. Ryniawec, Petitioner
16768
vs.
Honorable Callie Tsapis, Judge of the Circuit Court of Brooke County, West Virginia, and Connie Jean Ryniawec (Eddy), Respondents

On a former day, to-wit, October 7, 1985, came Shirley M. Ryniawec, by Marc B. Chernenko, her attorney, and presented to the Court her motion in writing to stay the execution of the judgment of this Court entered on September 23, 1985, until January 1, 1986 to permit an application to the Supreme Court of the United States for an appeal or writ of certiorari to the judgment of this court.

Upon consideration whereof the Court is of opinion to and doth grant said motion. It is therefore considered and ordered that the execution of the judgment entered on September 23, 1985, be suspended for a period of ninety days in order to permit the aforesaid petitioner to apply to the Supreme Court of the United States for an appeal or writ of certiorari; which is ordered to be certified to the Circuirt Court of Brooke County, West Virginia.

A True Copy

Attest: _____
Clerk Supreme Court of Appeals

APPENDIX C

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,
Plaintiff,
vs.
CONNIE JEAN RYNIAWEC (EDDY)
Defendant.
CIVIL ACTION NO. 82-C-294-Ts

ORDER

On the 23rd day of May, 1985, came CONNIE JEAN RYNIAWEC (EDDY), in person, and by her Attorney, Paul T. Camilletti, and as well came Shirley Ryniawec, the person who has actual physical custody of and the paternal grandmother of the infant child of the parties hereto, Angelina Marie Ryniawec, in person, and with her Attorney, Marc B. Chernenko; MICHAEL LEROY RYNIAWEC, the Plaintiff herein, appearing neither in person, by pleading, counsel or otherwise, this date having been set by the Court for a status conference in the above-referenced matter.

WHEREUPON, counsel for Shirley Ryniawec reiterated his previous objection to these proceedings based upon the federal Soldiers and Sailors Civil Relief Act due to the fact that the Plaintiff, Michael Leroy Ryniawec, continues to be a member of the US Army stationed in Darmstadt, West Germany, and he is unable to attend these proceedings nor has he received personal service in this matter.

THEREAFTER, the Court did advise the parties that she had received the report of Delbert Bonar, caseworker for the Belmont County, Ohio, Department of Welfare, regarding his homestudy investigation of the home of Connie and Anthony Wayne Eddy, 4746 Noble Street, Bellaire, Ohio. The Court further advised the parties that although she had not yet received a similar report from the State of Maryland Department of Welfare, it was her intention to proceed in this matter.

WHEREUPON, the Court did find, based upon the above-referenced homestudy investigation, that the circumstances of Connie Eddy have changed and that it would be in the best interest of the infant child of the parties hereto, Angelina Marie Ryniawec, to have custody placed with her mother, Mrs. Connie Eddy, the Petitioner herein, and to be removed from the custody of her father, Michael Leroy Ryniawec, under physical custody of her paternal grandmother, Shirley Ryniawec.

WHEREUPON, Counsel for Shirley Ryniawec did state his objection to the Court's consideration of said homestudy investigation due to the fact that Delbert Bonar, the person purporting to have submitted said report, is not present in Court and subject to examination by the parties.

WHEREUPON, Counsel for Shirley Ryniawec objected to the change of custody and requested a stay of said change for the purposes of filing a Writ or Petition with the Supreme Court of Appeals of West Virginia with respect to this Order in these proceedings.

ACCORDINGLY, after considering the Petition previously filed by Connie Jean Ryniawec (Eddy) and the arguments of counsel, the Court does

ORDER that temporary custody of the infant child of the parties hereto, Angelina Marie Ryniawec, is hereby ordered placed with her mother, Connie Jean Ryniawec (Eddy) 4746 Noble Street, Bellaire, Ohio, and therefore, the previous Order of this Court in which custody of the infant child of the parties hereto was granted to Michael Leroy Ryniawec, the Plaintiff; is hereby modified; and it is further

ORDERED that during such temporary custodial placement, Mrs. Shirley Ryniawec, the paternal grandmother of Angelina Marie Ryniawec, shall enjoy visitation with Angelina every other weekend. It is further

ORDERED that this custody Order is and shall be stayed for a period of two weeks from the date of entry of this Order so as to afford counsel an opportunity to petition the West Virginia Supreme Court of Appeals, and it is further

ORDERED that during the pendency of the stay of this Order, Connie Jean Ryniawec (Eddy) shall enjoy visitation with Angelina Marie Ryniawec each week from Thursday, at 2:00 p.m., to Saturday, at 5:00 p.m.

The objection of counsel for Shirley Ryniawec to the continuation of these proceedings based upon the federal Soldiers and Sailors Civil Relief Act as well as the objection to the Court's consideration of the above-referenced homestudy investigation and the granting of tempoary custody to Mrs. Eddy are both hereby noted; and the objection of counsel for Mrs. Eddy to the stay of this Order is also hereby noted.

ENTER this 12th day of June, 1985.

/s/ Callie Tsapis

CALLIE TSAPIS, Circuit Judge

APPENDIX D

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO.

SHIRLEY M. RYNIAWEC,

Appellant,

v.

THE HONORABLE CALLIE TSAPIS,
Judge of the Circuit Court of
Brooke County, et al,

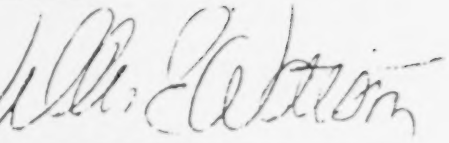
Appellees.

NOTICE OF APPEAL
FROM THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Your Petitioner, Shirley M. Ryniawec, by counsel, pursuant to the Rules of the United States Supreme Court, hereby respectfully represents that she is appealing from that Judgment Order of the Supreme Court of Appeals of West Virginia dated the 23rd day of September, 1985, in which your Appellant's Petition for a Writ of Prohibition was denied.

Your Appellant further states that her appeal is being taken pursuant to Title 28 of the United States Code Section 1257(1).

Respectfully submitted,

BY: 

WILLIAM E. WATSON

Of Counsel for Appellant

WILLIAM E. WATSON
MARC B. CHERNENKO
WILLIAM E. WATSON & ASSOCIATES
800 Main Street
Wellsburg, West Virginia 26070

COUNSEL FOR APPELLANT

AFFIDAVIT OF CERTIFICATE OF SERVICE

STATE OF WEST VIRGINIA,

COUNTY OF BROOKE, to-wit:

On the 16th day of December, 1985, personally appeared before me, a Notary Public, MARC B. CHERNENKO, who after first being duly sworn, doth depose and say as follows:

That he served upon the following the Notice of Appeal from the Supreme Court of Appeals of West Virginia, by first class United States mail, postage prepaid, on this 16th day of December, 1985:

The Honorable Callie Tsapis
c/o David B. Cross, Esq.
Prosecuting Attorney for
Brooke County
67 Seventh Street
Wellsburg, WV 26070

The Honorable Callie Tsapis
c/o Brooke County Courthouse
Seventh Street
Wellsburg, WV 26070

Clerk
Circuit Court of Brooke County
Brooke County Courthouse
Seventh Street
Wellsburg, WV 26070; and

Connie Jean Ryniawec (Eddy)
c/o Paul T. Camilletti, Esq.
30 Twelfth Street
Wheeling, WV 26003.

And further your Affiant sayeth not.

MARC B. CHERNENKO

TAKEN, sworn to and subscribed before me this 16th day of December, 1985.

My commission expires: February 8, 1995.

NOTARY PUBLIC

APPENDIX E

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

MICHAEL LEROY RYNIAWEC,
Plaintiff,
vs.
CONNIE JEAN RYNIAWEC,
Defendant
Civil Action No. 82-C-294Ts

PETITION

Comes now your Petitioner, CONNIE JEAN EDDY, and states as follows:

1. That your Petitioner, CONNIE JEAN EDDY, is the same person as CONNIE JEAN RYNIAWEC, Defendant in the above styled divorce action.

2. That by Order entered on the 14th day of July, 1983, this Court granted the parties hereto a Divorce and provided at paragraph 2 thereof that the Plaintiff, MICHAEL LEROY RYNIAWEC, "is a fit and proper person to have the care, custody and control of the minor child as long as he is living at his mother's home; in the event he leaves his mother's home, the Court will review his circumstances at that time before continuing custody with him.

3. This Order also provided at paragraph 3 that the Defendant, CONNIE JEAN RYNIAWEC, your Petitioner herein, shall be entitled to reasonable rights of visitation with the infant child subject to giving the Plaintiff 24-hours notice of her intent to exercise her visitation rights.

4. It is your Petitioner's information that her child, Angelina Marie Ryniawec, aged 3 years, is present residing at the home of Shirley Ryniawec, the mother of MICHAEL LEROY RYNIAWEC, which is located at Apple Pie Ridge, West Liberty, Brooke County, West Virginia.

5. Your Petitioner has been unable to arrange visitation with her child since April of 1984.

6. Your Petitioner is advised and therefore states that MICHAEL LEROY RYNIAWEC no longer resides at his mother's home on Apple Pie Ridge, West Liberty, Brooke County, West Virginia, but is presently in the service of the United States Army and she believes that he is stationed overseas.

7. Since said divorce, your Petitioner has remarried. Her husband's name is Anthony Eddy. Petitioner and her husband reside at 1601 Fountain Green Road, Bel Air, Maryland 21014.

8. Petitioner is not employed. She can devote her time to rearing and caring for her minor child. Her husband, Anthony Eddy, is employed by Lupton Home Improvement Co., Inc., 544 S. Rolling Road, Baltimore, Maryland 21228, as a carpenter.

9. Mr. James Lee, Probation Officer of this Court, investigated the parties in order to assist the Court in deciding the issue of custody of the child, Angelina Marie Ryniawec; he reluctantly recommended that the child be placed in the custody of her father, because it appeared that her father's family could provide a better environment than could Petitioner at that time.

10. Since that time there has been a vast change in circumstances both of the Petitioner and the Respondent, MICHAEL LEROY RYNIAWEC; so much so that it is

now in the best interest of the child, ANGELINA MARIE RYNIAWEC, that she be placed in the custody, care and control of her mother, CONNIE JEAN EDDY.

WHEREFORE, your Petitioner, CONNIE JEAN EDDY, respectfully prays: that due process issue; that a copy of this Petition and Notice of Hearing thereon be served upon MICHAEL LEROY RYNIAWEC and also upon Shirley Ryniawec who has actual physical custody of the child, Angelina Marie Ryniawec; and that at a Hearing upon the matters raised herein, your Petitioner, CONNIE JEAN EDDY, be granted custody of her daughter, Angelina Marie Ryniawic; and for such other and further relief as to the Court may seem proper.

Respectfully submitted,

CONNIE JEAN EDDY

BY Paul T Camilletti
Counsel

Counsel for Petitioner:
Paul T. Camilletti, Esquire
CAMILLETTI AND SACCO
30 Twelfth Street
Wheeling, West Virginia 26003
Phone: (304) 233-2541

STATE OF WEST VIRGINIA

COUNTY OF OHIO, TO-WIT:

CONNIE JEAN EDDY, Petitioner, being first duly sworn, says that the facts and allegations contained in the foregoing PETITION are true, except so far as they are therein stated to be upon belief, in which case, she believes them to be true.

Connie Jean Eddy

CONNIE JEAN EDDY

Taken, subscribed and sworn to before me this 23rd day of November, 1984.

Paul T Camillotti

Notary Public of, in and for
Ohio County, West Virginia

My Commission Expires:
June 6, 1988